

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Applicant : Uri Arnin
Appl. No. : 10/565,205
File : January 20, 2006
Title : ELASTOMERIC SPINAL DISC NUCLEUS REPLACEMENT
Group Art Unit: 3738
Examiner : Ann M. Schillinger
Docket No. : 1454VAS-US
Honorable Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

RESPONSE

Sir:

Applicant has carefully studied the outstanding Official Action mailed on January 26, 2007. This response is intended to be fully responsive to all points of rejection raised by the Examiner and is believed to place the application in condition for allowance. Favorable reconsideration and allowance of the application are respectfully requested.

Claims 1-3, 5, 6, 8-13, 15 and 16 stand rejected under 35 USC §102(b) as being anticipated by Layne et al (US 2002/0026195).

Claim 4 stands rejected under 35 USC §103(a) as being unpatentable over Layne et al in view of Scholten et al (US 4969888).

Claim 7 stands rejected under 35 USC §103(a) as being unpatentable over Layne et al in view of Foley et al (US 6676665).

Claim 14 stands rejected under 35 USC §103(a) as being unpatentable over Layne et al in view of Berger (US 6706069).

In the rejection over Layne et al., Examiner states "Layne et al. discloses...an elastomeric sheath (50, 60) assembled around a rod (200, 210, 212, 213, 220), a portion of said sheath being arranged for sliding along said rod (see Figure 23); and a sheath compactor (275) adapted to slide a portion of said sheath along said rod from a first position to a second position (paragraph 0079), wherein in the first position said sheath is in a non-expanded orientation (see Figure 22) and in the second position said sheath is in an expanded orientation wherein folds of said sheath expand radially outwards from said rod (see Figures 23-25, 27)."

Applicant respectfully traverses these rejections. First, Applicant respectfully wishes to point out that the statement Layne et al. discloses “an elastomeric sheath (50, 60) assembled around a rod (200, 210, 212, 213, 220)” is incorrect. Quoting from paragraphs 0083-0084 of Layne et al.: “As shown in FIGS. 18-27...**An insertion device 200 comprising a hollow member 210 fitted with a stylet 275**, as previously described above, can be introduced through the soft tissues to a vertebral body, which can located fluoroscopically. The stylet and insertion device will desirably penetrate through the cortical bone 31 of the vertebral body 30, **and the stylet 275 can then be removed**. In an embodiment of the insertion device wherein the hollow member 210 comprises one or more adjacent sections 265 separated by a plurality of longitudinal score lines 260, the removal of the stylet 275 desirably causes the distal end 250 of the hollow member 210 to flare as depicted in FIG. 22. **An expandable structure 50, such as a medical balloon, can be inserted through the hollow member 210 into the vertebral body 30.**”

It is clear that the expandable structure 50 is inserted *through* the hollow member 210 of insertion device 200. Thus it is incorrect to say that elastomeric sheath (50, 60) is assembled *around* a rod (200, 210, 212, 213, 220); the sheath is *inside* the rod, not around it.

Second, Applicant respectfully wishes to point out that the statement Layne et al. discloses “a sheath compactor (275) adapted to slide a portion of said sheath along said rod from a first position to a second position (paragraph 0079)” is incorrect. Paragraph 0079 merely states “The stylet 275 may further be any appropriate shape and size which allows it to slide within and mate with the hollow member 210.” However, sliding in hollow member 210 has nothing to do with compacting the sheath, which Examiner states is elastomeric sheath (50, 60). As quoted above, the expandable structure 50 is inserted through the hollow member 210 only *after* removing stylet 275. Stylet 275 does not touch expandable structure 50 and has nothing to do with it.

It is thus respectfully submitted that Layne et al. does not negative the patentability of any of the claims and accordingly all of the rejections are deemed overcome. Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

Respectfully submitted,
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